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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Part 90 of the)
Commission's Rules to Provide for the) PR Docket No. 89-552
Use of the 220-222 MHz Band by the) RM-8506
Private Land Mobile Radio Service)

Implementation of Sections 3(n) and)
332 of the Communications Act)
Regulatory Treatment of Mobile) GN Docket No. 93-252
Services)

Implementation of Section 309(j) of)
the Communications Act - Competitive) PP Docket No. 93-253
Bidding)

COMMENTS OF GLOBAL CELLULAR COMMUNICATIONS, INC.

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COMMENTS OF GLOBAL CELLULAR COMMUNICATIONS, INC.

Global Cellular Communications, Inc. ("Global"), by its attorneys, hereby submits its comments on the Commission's Fifth Notice of Proposed Rulemaking (FCC 97-57, released March 12, 1997) ("NPRM") in the above-referenced proceeding. Global holds a license for a Phase I nationwide, commercial 220-222 MHz ("220 MHz") system, and therefore has a substantial interest in the outcome of this proceeding.¹

¹ Global notes that it is concerned over the discrepant rules adopted by the *Report and Order* in the above-referenced proceeding, which require site-by-site filings for Phase I but not Phase II licensees. Global
(continued...)

I. INTRODUCTION AND SUMMARY

In the *NPRM*, the Commission is considering the adoption of regulations to allow the partitioning and/or disaggregation of licensed spectrum in the 220 MHz band. Global generally endorses the Commission's efforts, which have the potential for speeding the provision of advanced wireless services to many geographic areas that may have lower priority for nationwide licensees. Global strongly favors the implementation of flexible rules similar to those adopted for CMRS services, which should achieve Commission goals of administrative efficiency, fairness, and increased market participation.

As discussed in more detail below, Global urges adoption of regulations that achieve the following:

- Parties to agreements for the partitioning of a Phase I nationwide license should be allowed to define the boundaries along which the license will be partitioned;
- Parties to the partitioning agreement should be allowed to allocate the construction obligation among them, subject to FCC approval of the agreement. To assure that partitioning is not utilized to avoid meeting construction deadlines, however, both the partitioner's and partitionee's licenses should be subject to revocation if either licensee fails to meet construction obligations imposed through the fourth year. Thereafter, if either party fails to meet the obligations undertaken in the partitioning agreement, its license alone would be at risk.
- Phase I nationwide licensees should be authorized to disaggregate their spectrum, but the minimum allowable spectrum to be disaggregated should be a single 5 khz channel. Disaggregates should be held to the same

¹ (...continued)

will address this issue in a Petition for Reconsideration of the *Report and Order*.

construction benchmarks on its spectrum as the original licensee; however, disaggregates should be able to meet that obligation in different markets from those in which the original licensee is constructing its network.

- Licensees should be able to utilize both partitioning and disaggregation in a combined transaction, with the construction rules for both types of assignment applicable to the combined license.
- Partitionees/disaggregates in the 220 MHz service should be granted their licenses for the remainder of the original license term, and given the same renewal expectancy (Subject to the same expectancy standards) afforded other 220 MHz licensees.

II. IMPLEMENTING PARTITIONING AND DISAGGREGATION

Global strongly supports the adoption of rules allowing both partitioning and disaggregation of Phase I nationwide licenses. As the Commission has already recognized in its generic proceeding on these matters,² "geographic partitioning . . . will help to remove potential barriers to entry, thereby increasing competition . . . and speed service to unserved and underserved areas."³ There is no reason to believe that these same public interest benefits will not accrue to the 220 MHz SMR service. This is particularly true for nationwide licensees.

² *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees*, WT Docket No. 96-148, *Implementation of Section 257 of the Communications Act - Elimination of Market Entry Barriers*, GN Docket No. 96-113, Report and Order (released Dec. 20, 1996) ("Partitioning R&O").

³ *Id.* at ¶ 4.

Developing systems on a nationwide basis is time-consuming, a task likely well outside the reach of many small business, rural telephone companies and minority- and female-owned entrepreneurial businesses. Indeed, it has been a daunting task to the four nationwide licensees. The strategic use of partitioning would allow licensees like Global to consider assigning parts of the nationwide license service area to other enterprises, to develop as licensees in conjunction with the primary nationwide licensee.

These opportunities would be particularly appropriate in areas which are either lower on the nationwide licensee's priorities, or where, due to local expertise, the assignee is clearly better suited to develop spectrum opportunities. In either event, service is brought to the public sooner and more efficiently, furthering the Commission's stated goals of efficiency, regulatory consistency, and increased market participation.

Disaggregation presents similar opportunities for nationwide licensees. It will allow those nationwide licensees who, over time, are able to meet their service demands with less than the full complement of channels to assign the excess spectrum to new entrants, thereby increasing spectrum utilization and creating further opportunities for innovation and competition. It also provides an alternative for smaller enterprises unable to compete effectively in Phase II auctions, to obtain smaller amounts of

spectrum from Phase I or Phase II licensees. As with partitioning, disaggregation will clearly further the Commission's stated goals of efficiency, regulatory consistency, and increased market participation.

A. Partitioning Along Any Area Defined by the Parties

As the Commission has recognized in the broadband PCS context, there is little to be gained by limiting licensees' flexibility in determining the service area of a partitioned license. Global agrees with the Commission's preliminary conclusion to allow partitioning of nationwide licenses based on any license area defined by the parties. This approach allows parties to design flexible and efficient partitioning agreements that permit the marketplace to shape optimal service areas. Requiring partitioning along arbitrary lines (e.g., county or state) would in many cases be too restrictive and could discourage partitioning; such an approach also creates inefficiencies by forcing partitionees to take on more area than they are willing or capable of serving.

B. Special Construction Rules Are Needed for Partitionees in Light of Unique Phase I Construction Requirements

Construction requirements for Phase I licensees differ substantially from those for broadband PCS and even Phase II

licensees;⁴ those construction requirements, coupled with a prohibition on the transfer or assignment of the license prior to satisfying the fourth year minimum build-out requirement, were imposed to discourage insincere applicants and to assure that these nationwide licenses were put to use during the license term. Therefore, slightly modified rules must be crafted to assure that the Commission's objectives in establishing these extensive construction requirements will not be circumvented by partitioners.

The *Partitioning R&O* adopted two options for partitioners to satisfy construction requirements of the original license. Either the partitionee must certify that it will satisfy the same construction requirements as the original licensee or the partitioner must certify that it has already met, or will meet, all of the construction requirements of the entire market, in which case the partitionee is subject to a "substantial service" requirement.⁵ However, the Commission correctly notes in the *NPRM* that, because a partitioning agreement is likely to divide the "original seventy" markets on which the construction

⁴ Phase I nationwide licensees must meet construction benchmarks at two, four, six, and ten years after initial license grant; not only must licensees construct base stations in a minimum percentage of geographic areas designated in their original applications at each benchmark, but those markets must include a specified minimum of base stations in Urban Areas designated in the FCC's Rules. 47 C.F.R. § 90.725(a).

⁵ *Partitioning R&O* at ¶ 17.

requirements are based, neither the Phase I partitioner nor the partitionee may be able to satisfy the *Partitioning R&O* criteria. Global therefore believes that a hybrid of the two approaches should be adopted for Phase I nationwide licensees.

First, the parties to the partitioning agreement would be free to allocate between them the construction obligations imposed at the second, fourth, sixth and tenth anniversaries, just as they would be dividing the "original seventy" markets between their partitioned service areas. As part of the transfer/assignment process,⁶ the parties would have to certify to the Commission their plan for collectively meeting the construction obligation; in approving the assignment, the Commission would also approve the parties' allocation of the construction obligations.

In order to assure that the partitioning agreement was not used to circumvent the licensee's construction obligation, both parties would have to certify their construction progress at each of the benchmark anniversaries, i.e., the second, fourth, sixth

⁶ Global supports the Commission's proposed application of Part 90 partial assignment procedures to 220 MHz partitioning and disaggregation transactions. Under this proposal, partitioning or disaggregation applications would go on public notice, and the parties would have to submit an FCC Form 490, a Form 600, and a Form 430 (for a partitionee/disaggregatee without a Form 430 already on file), all together under cover of the Form 490. Implementing such procedures would reduce regulatory inconsistencies among CMRS services, and standardize the entire partitioning and disaggregation licensing process.

and tenth anniversaries of the original license grant. If, as of the fourth anniversary (when at least 40% of the system, including 28 Urban Markets must be in operation) the combined construction by the partitioner and the partitionee failed to satisfy the original construction obligation, BOTH licensees would be subject to cancellation; however, if the total number of markets to which both parties had certified construction would meet the benchmark 40% test, then the licenses would not be canceled. Global believes that this approach provides sufficient disincentives against inefficient or insincere partitioning to ensure that this vehicle is used to speed service to the public and not as a means of avoiding the construction benchmarks. Realizing that, upon either party's non-compliance with this early benchmark, the Commission could reclaim, then potentially auction, the Phase I spectrum, partitioned licensees will have an incentive to diligently pursue construction benchmarks.

At the same time, once those early benchmarks are fulfilled, the bona fide intentions of the parties should no longer be suspect. Therefore, at the sixth and tenth year benchmarks, each licensee would certify its progress and be judged based on its satisfaction of the obligation that it alone had undertaken in the transfer/assignment process. If either the partitioner or the partitionee failed to meet its obligation as of one of those benchmarks, then only that license would be subject to revocation, and it would be subject to revocation even if the

other licensee had exceeded its obligation. This approach recognizes that marketplace or financial conditions may cause one of the parties to fail in building out the remainder of its network, without unduly burdening both parties with a risk of loss by reason of the other party's misfortune.

C. Disaggregation of Phase I Spectrum

Global supports the Commission's proposal to permit disaggregation of Phase I licenses; the flexibility that results from such policies will substantially further the public interest goals enunciated by the Commission in the *Partitioning R&O*.⁷ Global also agrees that a Phase I nationwide disaggregatee should be required to meet the same construction benchmarks as the original licensee.

In this regard, the Commission should, however, clarify that any Phase I licensee who disaggregates spectrum prior to meeting any construction benchmark will thereafter be required only to construct the total number of channels for which it remains licensed,⁸ while disaggregatees would simply be required to meet the same two, four, six, and 10-year benchmarks as the disaggregator for the spectrum it obtains.⁹ Moreover, while a

⁷ *Partitioning R&O* at ¶ 19.

⁸ 47 C.F.R. § 90.725(a).

⁹ Because the service areas would remain nationwide, no adjustment to the benchmarks is required. For example,
(continued...)

disaggregatee should be able to take advantage of any base stations previously constructed with the maximum number of channels by the original licensee, Global believes that the disaggregator and disaggregatee should not have to satisfy the benchmarks in the same markets; so long as each has constructed its full complement of channels in the appropriate number of markets, the benchmarks should be satisfied.¹⁰

D. Combined Partitioning and Disaggregation

The *NPRM* also asks whether it is feasible to allow combined partitioning and disaggregation, e.g., creation of a service territory for the State of California in which only two channels are licensed to the new partitionee/disaggregatee. Global believes that such an approach is both feasible and practical, and should be permitted. In such instance, the above-described partition and disaggregation procedures would be combined; properly policed, such policies should produce a workable solution that furthers the licensing flexibility necessary to

⁹ (...continued)

if two of the five channels were disaggregated, the disaggregatee would have to construct base stations with two channels in the minimum number of markets required at each of the benchmark dates. Similarly, the disaggregator would have to do the same, with three channels at the required amount of base stations.

¹⁰ As a practical matter, this could result in more markets obtaining service at a faster pace, as the disaggregator and the disaggregatee construct their systems in different markets, albeit with fewer channels in each market.

promote efficient spectrum use as well as increased market entry for smaller entities, and a potential for increased competition and innovation in niche market areas. In the above-described example, the parties would have to agree on how the partitionee would be involved in satisfying the nationwide construction obligation; in doing so, however, it would be required to construct its full complement of two channels, while the original licensee would still have to construct stations in the number of markets outside California for which it was responsible with the full complement of five channels. At each benchmark, the Commission would have assurance that service had been initiated in the minimum number of markets required, fully establishing the bona fide performance of the licensees.

E. One-Channel Minimum Disaggregation Standard

Global believes that a minimum disaggregation standard of one 5 kHz channel is appropriate for the 220 MHz service. Given the sizeable scope of a nationwide license in particular, permitting one-channel disaggregation will allow for the reduced-investment opportunities needed to encourage participation by smaller entities, while still providing widespread market access. At the same time, allowing less than a one 5 kHz channel standard would be administratively difficult with respect to tracking spectrum licensing, and may not provide enough spectrum

for any entrepreneur to make full value of the spectrum licensed to it.

**F. Partitionee / Disaggregatee License Term and
Renewal Expectancy**

Global agrees with the Commission that parties obtaining partitioned 220 MHz licenses or disaggregated spectrum should receive their new licenses only for the remainder of the original license term. This policy will ensure prompt action by licensees to pursue spectrum use, and will protect against licensees who might use the disaggregation/partitioning process to circumvent the original license term, and unnecessarily delay implementing service to the public.

Global also strongly supports granting the same renewal expectancy to 220 MHz partitionees and disaggregatees as is afforded other 220 MHz licensees. Such a policy is clearly required in the interests of fairness and consistency. As long as the partitionee/disaggregatee can establish compliance with the rules and the provision of the "substantial service" needed to warrant the renewal expectancy, there is no reason that renewal expectancy should be denied such licensees. Indeed, without such expectancy, such "new" licensees will not be able to attract the capital necessary to fully develop this spectrum.

III. CONCLUSION

For the foregoing reasons, Global supports the Commission's proposals to enhance spectrum utilization, administrative efficiency, and market participation by smaller entities through adoption of partitioning and disaggregation procedures in the 220 MHz service. Global emphasizes that adopting flexible partitioning and disaggregation rules for nationwide licenses will facilitate establishment of optimal service areas, standardize regulatory procedures among CMRS services, and expedite 220 MHz service to the public.

Respectfully submitted,

GLOBAL CELLULAR COMMUNICATIONS, INC.

A handwritten signature in dark ink, appearing to read "David J. Kaufman", is written over a horizontal line.

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April 15, 1997

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